UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/816
25 July 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 816

Case No. 912: AL-HAFEDH

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen, Vice-President; Ms. Deborah Taylor Ashford;

Whereas, on 26 June and 12 October 1995, Aisser Al-Hafedh, a staff member of the United Nations and a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 6 February 1996, the Applicant, after making the necessary corrections, again filed an application containing pleas requesting the Tribunal:

> "... to consider my entitlement for [payment of a] termination indemnity and [to] be treated in the same manner as those of my colleagues in UNRWA declared redundant."

Whereas the Respondent filed his answer on 28 May 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 1 March 1989, on a one year temporary indefinite appointment as an Area

staff member, as a Secretary "A", at the grade 9, step I level, in the Office of the Coordinator of Operations at UNRWA Headquarters, Vienna.

On 4 August 1993, the Administration decided to assign the Applicant as secretary to both the Coordinator of Operations and the Assistant to the Coordinator of Operations, with the following proviso: "To the extent that [the Applicant's] services are not required in that office during the present absence of both officers, she will be available for duty elsewhere in the Agency." With effect from 4 October 1993, due to the continued absence of the Coordinator of Operations and the Assistant to the Coordinator of Operations, the Applicant was temporarily assigned to act as secretary to the Special Adviser to the Commissioner-General.

On 4 May 1994, the Applicant wrote to the Director of Administration and Human Resources, informing him that she had accepted an offer of employment with the United Nations Drug Control Programme (UNDCP) beginning 1 June 1994. She requested that she be treated in the same manner as those of her colleagues who were declared redundant, on the grounds of the Commissioner-General's statement on 19 January 1994, that "'the Coordinator of Operations would be transferred to the West Bank'". The post of Assistant to Coordinator of Operations (to whom she had been reporting) had been abolished in October 1993. In a reply dated 10 May 1994, the Officer-in-Charge, Department of Administration and Human Resources, stated: "As you are aware, you have not been declared redundant; in fact, you will be replaced on your departure. Therefore, it is not possible for the Agency to accede to your request."

The Applicant separated from the service of the Agency at the close of business on 31 May 1994.

On 15 June 1994, the Applicant requested the Director of Administration and Human Resources to review the decision not to pay her a termination indemnity.

On 5 August 1994, the Director of Administration and Human Resources replied to the Applicant, that:

> "... the Agency is not in a position to accede to your request as you were not declared redundant. As you are fully aware, you resigned from UNRWA to take up a post with UNDCP. Pursuant to the Agency Staff Rules, an Area staff member who resigns his of her post is not eligible to receive a termination indemnity."

On 10 August 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 17 May 1995. Its evaluation, judgement and recommendation read as follows:

> "In its deliberations, the Board considered all pertinent rules, regulations and precedents and resolved that the Appellant's case is equivalent to a redundancy case for the following reasons:
>
> A. The situation of suspense, fear and uncertainty of the Appellant's position, particularly after the abolition of the position of the Assistant to Coordinator of Operations (to whom she reported) and the transfer of the Coordinator of Operations, coupled with the general situation of uncertainty created due to the projected move of the Agency Headquarters to the area of operations especially after the relocation of many departments.
>
> B. The temporary arrangement to assign the Appellant to act as Secretary to the Special Adviser to the Commissioner-General which lasted for eight months without confirming the assignment which the Administration failed to exercise to the detriment of the Appellant.
>
> The Board here noted that the Appellant was informed of the said arrangement by copy of a Note for the Record written by the Deputy Director of Administration and Human Resources <u>without receiving an official letter addressed to her</u> by the pertinent Personnel Officer.
>
> The Board believes that the Appellant was <u>NOT</u> properly informed of the decision to assign her to

act as Secretary to the Special Adviser to the Commissioner-General.

The Board also noted that in his Inter-Office Memorandum dated 4 August 1993 which was copied to the Appellant, the Deputy Director of Administration and Human Resources had stated that the Appellant 'will be available for duty elsewhere in the Agency' without any specification of the general meaning of the work 'elsewhere', the fact which caused greater apprehension and uncertainty on the part of the Appellant.

C. The Board is also of the opinion that the case of Ms. [X] is similar to the of the Appellant.

Ms. [X] was transferred from her original area post to an international post within the Agency and was paid [a] termination indemnity, while the Appellant moved from her area post with the Agency to an international post with another UN Agency at a lower grade but was not paid [a] termination indemnity.

The Board fully agrees with the way Ms. [X]'s case was dealt with by the Administration. However, the Board believes that the Appellant should not have been treated on a less favourable basis.

The Board finally sees a similarity between the case of Ms. [X] and that of the Appellant, in that, both their posts were reclassified (downwards) and both incumbents left the Agency's service, the former was paid termination indemnity whereas the latter was not.

RECOMMENDATION

In view of the foregoing, the Board unanimously makes its recommendation that the Administrative decision appealed against be reviewed with a view to paying the Appellant [a] termination indemnity as provided for in the pertinent Area Staff Rules."

On 12 June 1995, the Commissioner-General informed the Applicant as follows:

"I have carefully reviewed the Board's report, and I do not agree with the Board's conclusions and recommendations.

> Area staff rule 109.9 provides that [a] termination indemnity is payable only, inter alia, when the staff member's services have been terminated in the interest of the Agency under Area staff regulation 9.1. However, you have resigned from the Agency's service to take a position with another organization; therefore, under the Agency's rules you are not entitled to a termination indemnity. Thus, I do not accept the Joint Appeals Board 's conclusions and recommendations, and the Administrative decision is upheld. Your appeal is, therefore, dismissed."

On 6 February 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

Because her employment situation with the Agency was so precarious that she was forced to seek employment elsewhere, the Applicant is entitled to be treated in the same manner as those of her UNRWA colleagues who were declared redundant and paid a termination indemnity.

Whereas the Respondent's principal contention is:

The Agency's Area Staff Regulations and Staff Rules provide that a termination indemnity is payable only, inter alia, when a staff member's services have been terminated in the interest of the Agency. The Applicant does not meet this requirement since she resigned from the Agency to take a position elsewhere.

The Tribunal, having deliberated from 14 to 25 July 1997, now pronounces the following judgement.

I. The Applicant occupied a post at UNRWA as Secretary to both the Coordinator of Operations and the Assistant to the Coordinator of Operations. She was then temporarily assigned as Secretary for

the Special Advisor to the Commissioner-General during a lengthy absence of her principal supervisors.

The Applicant accepted a United Nations Drug Control Programme (UNDCP) post, because she was uncertain of her future with UNRWA. There is no reason to doubt this explanation. As she explained in her letter of 4 May 1994, to the Director of Administration and Human Resources, the Coordinator of Operations was to be transferred to the West Bank Field in 1994. The post of Assistant to the Coordinator of Operations was abolished in October 1993.

II. The Applicant elaborates her concern about her situation in a memorandum of 15 June 1994, in which she refers to her assignment as Acting Secretary to the Special Advisor to the Commissioner-General. After six months as Acting Secretary, she had not been confirmed in the post. She was not advised as to whether she would be assigned to that post indefinitely or whether she would be moved to another temporary post.

III. Because of what she viewed as a precarious future with UNRWA, the Applicant accepted a post at a lower grade at UNDCP. After accepting the new post, the Applicant was informed that her UNRWA post at grade 10 was cancelled, and that a new post at grade 8 had been approved.

IV. The Applicant requests that the recommendation of the JAB that she receive a termination indemnity be implemented. In support of her claim, the Applicant relies not only on the facts of her situation but also on the treatment by UNRWA of other staff members.

V. The Joint Appeals Board (JAB) gained access to the personnel files of these staff members. One of these staff members worked as a Senior Secretary. She was transferred from her area post to the

International General Service post of Special Assistant to the Commissioner-General, with a promotion. Following this advantageous transfer, the staff member was paid a termination indemnity. The Administration's response is that the transfer took place at the Agency's request, which necessitated the payment of a termination indemnity.

Another staff member's grade 9 post was abolished, to be established simultaneously in the same Department, at grade 8. The staff member in question was not transferred to the newly established post but was separated and given a termination indemnity; the newly established post remained vacant for four months.

VI. Area staff rule 109.9 provides, inter alia, that "a staff member shall become eligible upon separation to receive a termination indemnity under the provisions of this rule provided that (A) his/her temporary indefinite appointment has been terminated under staff regulation 9.1 in the interests of the Agency. ... No termination indemnity shall be payable under this rule where: ... (B) the staff member's service with the Agency ceases for any reason other than stated in paragraph 1(A) of this rule." Area staff regulation 9.1 provides that "[t]he Commissioner-General may at any time terminate the appointment of any staff member ... in the interest of the Agency."

Clearly the Applicant's appointment was not terminated in accordance with the provisions of area staff rule 109.9. The Applicant's appointment was not terminated by the Commissioner-General.

VII. The Tribunal accepts without difficulty that the Applicant was concerned for her future and indeed may have had good reason for her concern. It also takes into account the Applicant's interpretation of the reclassification of her post. However, the

Tribunal must also take cognizance of the Respondent's contention that the post was not reclassified until after the Applicant's departure and that there is no evidence that the post was to be reclassified during the Applicant's incumbency.

Although the Applicant may well have been placed in a difficult situation, it is too great a leap of logic to convert that situation into a kind of redundancy. In effect, the Applicant chose to describe it as redundancy, but the fact remains that, because she perceived herself to be under great pressure, she chose to leave.

VIII. The Tribunal concludes that the Applicant's case differs in material respects from the cases of the other staff members cited by the JAB. None of the procedures which normally result in redundancy had been initiated and the Applicant chose to leave the service of the Agency. The Applicant, therefore, is not entitled to payment of a termination indemnity.

IX. For the foregoing reasons, the Applicant's claims are hereby rejected.

(Signatures)

Hubert THIERRY
President

Samar Sen
Vice-President

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 817

Case No. 902: BAKIR

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen; Ms. Deborah Taylor Ashford;

Whereas, on 3 December 1995, Abdullah Mohd Bakir, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application containing pleas which read, in part, as follows:

"...

1. [To order] reappointment in an equivalent post of ARDO [Area Registration and Distribution Officer], ..., or terminati[on of] my services with full compensation;

2. [To order] compensation for the moral and psychological harm [incurred by the Applicant] as a result of [his] working as a Clerk (... [and] being supervised by my very counterpart, ARSSO [Area Relief and Social Services Officer], and/or reappoint[ment] in an equivalent post of a supervisory nature;

3. [To order] compensation for the partial disability [incurred by the Applicant] as a result of undergoing a surgery during duty hours. ..."

Whereas the Respondent filed his answer on 28 May 1996;

Whereas, on 23 July 1996, the Applicant requested the production of certain documents by the Respondent;

Whereas, on 5 August 1996, the Tribunal requested the Respondent's views on the Applicant's request for production of documents, which the Respondent provided on 8 September 1996;

Whereas the Applicant filed written observations on 8 October 1996;

Whereas the Applicant filed additional written observations on 16 April 1997;

Whereas the facts in the case are as follows:

The Applicant joined the Agency as a Clerk "C" in the Latakia Office, North Area, Syrian Arab Republic (SAR), on 18 April 1973. With effect from 1 August 1973, he served on a temporary indefinite appointment as an area staff member in the capacity of Food Centre Manager "C", at the grade 2, step I level, at Latakia Milk and Feeding Centre, Aleppo. With effect from 1 March 1979, the Applicant was transferred to the post of Area Registration and Distribution Officer (ARDO) at Homs Area Office.

On 8 November 1993, the Applicant wrote to the Director of UNRWA Affairs, SAR, notifying the latter that he had undergone a surgical operation, of which the "direct cause" was his work with the Agency; he requested compensation for his injury. On 21 November 1993, the Director of UNRWA Affairs, SAR, wrote to the Chief, Field Health Programme, attaching the Applicant's letter of 8 November and the medical certificate. The Director of UNRWA Affairs, SAR, requested that the Applicant be examined by a panel of UNRWA doctors, who could determine to what extent the Applicant's injury was attributable to his duties with the Agency. The medical report was adopted on 24 November 1993. It concluded that "[t]he accident occurred during work time" and that the Applicant had undergone surgery immediately after the onset of symptoms on

3 October 1993, as it was a "life threatening case". On 14 December 1993, the Chief, Medical Care Services, gave the following response to the Personnel Officer's request for a final determination of whether the Applicant's medical condition was attributable to service:

> "I concur with the Panel of UNRWA doctors who examined [the Applicant] on 24 November 1993, that the strangulation of the hernias is higher in persons who perform physical hard work, which is not the case with [the Applicant]."

On 5 January 1994, the Personnel Officer (Area), UNRWA Headquarters, Vienna, wrote to the Field Personnel Officer, SAR, stating that, based on the provisions of paragraph 6 of area staff rule 106.4, the Applicant would not be entitled to have his claim considered because he had failed to submit his claim within two months following the onset of his illness, "i.e. March 1993". The Personnel Officer further noted that the panel of UNRWA doctors had stated that the likelihood of incurring a strangulation of the hernia, from which the Applicant had suffered, was higher in those performing physical hard work, such as labourers, than in those performing administrative tasks.

On 27 January 1994, the Applicant wrote to the Field Administration Officer, SAR, requesting that his tasks be limited to "light administrative" work, that he be transferred to another post within Central Area or Latakia, and that he be exempted from distribution duties.

On 16 May 1994, the Applicant wrote to the Director of UNRWA Affairs, SAR, objecting to his post of ARDO, grade 08, having been reclassified and downgraded to that of Clerk, grade 07, and to the order that he should relinquish his office to the Area Relief and Social Services Officer.

In a reply dated 17 May 1994, the Director of UNRWA Affairs, SAR, stated that as a result of an Agency-wide study on the

organization and staffing of the Relief and Social Services Department at the Field Office and in the Areas, the post of ARDO in all areas except Damascus had been reclassified to Registration Clerk, grade 07. The Director stated that the Applicant's grade would be protected at its existing level, i.e., that he would be retained at grade 08, and that he would no longer be responsible for distribution as he had requested. The Director emphasized that neither the Applicant nor other Registration Clerks were being forced to resign and that the re-classification of posts had been effected "Agency-wide, in the interest of the Agency."

On 20 July 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 14 July 1995. Its findings, evaluations and recommendation read, in part, as follows:

"III. BOARD FINDINGS, EVALUATION AND JUDGEMENT

16. ...

A. The Appellant's appeal against the aboli[tion] and reclassification of his post of Area Registration and Distribution Officer, Grade 08, to Registration Clerk, Grade 07, with grade and salary protection:

...

..., the Board is of the opinion that it is the prerogative of the Administration to reorganize the structure of any division in the interest of the Agency provided that affected staff members are dealt with within the framework of the standing rules, and as long as the Administration's decision is not vitiated by any prejudice or bias against these staff members.

In this case, the Appellant was appointed to the post of Registration Clerk with grade and salary protection. The Board also could not establish that the Administration's decision to reclassify the Appellant's original post has been motivated by any extraneous factors.

As for the Appellant's objection to the Administration's decision to cancel the post of Camp Services Officer, the Board is of the opinion that it is within the managerial discretion of the Administration to organize and reorganize posts, as long as the relevant rules have been complied with and no evidence has been adduced to prove that the Administration's decision has been motivated by prejudice against the Appellant.

B. <u>The Appellant's appeal against the Administration's decision not to consider his illness attributable to his service with the Agency</u>:

...

By reference to the ... report [dated 24 November 1993] the [Medical] Board noted the following:

(a) The report states that the Appellant 'suffered from left inguinal hernia since March 1993 ... on October 1993 he felt pain in the left inguinal region and abdomen with vomiting; he was referred to hospital, where he was diagnosed as [having a] left strangulated inguinal hernia and an immediate operation was performed (life threatening case)'.

(b) The report also states that 'the accident occurred during the work time. However, the possibilities of strangulation of the hernia are higher in performing physical hard works where the case is usually found among labourers rather than administration workers', and that the Appellant 'should be excused from hard physical work due to the possibility of recurrence of hernia'.

(c) The medical doctors who submitted the report based their opinion on the medical report of the Medical care Hospital which states that the Appellant was admitted to the hospital on Sunday, 3 October 1993 at 8:30 a.m. for suffering of left strangulated inguinal hernia and underwent an operation.

The report of the Medical Care Hospital also states that the Appellant's injury is due to his strenuous work.

This report is obviously the only evidence which the Agency doctors had before them.

As for the date of the Appellant's illness, the Board could not find any evidence to support the conclusion of the three Agency doctors that the Appellant suffered from left inguinal hernia 'since March 1993', and, therefore, finds this part of their conclusions not acceptable.

IV. RECOMMENDATION

17. ..., the Board unanimously makes its recommendation

A. to uphold the Administration's decision to reclassify the Appellant's original post of Area Registration and Distribution Officer, Grade 08, to Registration Clark, Grade 07, with grade and salary protection; and, that this part of the Appellant's appeal be rejected, and

B. to review the Administration's decision not to consider the Appellant's illness attributable to his service with the Agency with a view to giving the Appellant compensation for his injury under the standing provisions of area staff rule 106.4."

On 31 August 1995, the Commissioner General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"You will note that the Joint Appeals Board concluded that the decision to reclassify your post was within the discretion of the Administration and that the decision was properly implemented; the Board recommended that this aspect of your appeal be dismissed. Regarding your service-incurred illness claim, the Board found that the medical evidence supported your claim and recommended that your illness be treated as attributable to service.

I have carefully reviewed the Board's report. I accept the recommendation to uphold the Administration's decision to reclassify your post and, therefore, this part of your appeal is dismissed. As to the Board's second recommendation, that your illness be treated as service-connected, the medical evidence does not support your contention that your illness arose out of service. Moreover, the medical opinions of record support the conclusion that the illness did not arise out of service. Therefore, I have decided not to accept the conclusions and recommendations of the Board, and your appeal is dismissed."

On 3 December 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's post of ARDO was actually abolished and, pursuant to the Staff Rules, the Agency should have offered him an equivalent post or terminated his services with full compensation, instead of downgrading his position.

2. The Applicant properly reported his illness within two months after his first attack on 3 October 1993. Since his illness was attributable to service with the Agency, the Applicant has a right to partial disability benefits.

Whereas the Respondent's principal contentions are:

1. The reclassification of the Applicant's post was a matter within the managerial discretion of the Agency, which discretion was properly exercised.

2. The Applicant's claim for compensation was not submitted within the requisite time-limit and his illness was not attributable to the performance of official duties on behalf of the Agency.

The Tribunal, having deliberated from 14 to 25 July 1997, now pronounces the following judgement:

I. The Applicant's case consists of two parts: first, he objects to the abolition by reclassification of his post of Area Registration and Distribution Officer, grade 8, to Registration Clerk, grade 7, with protected grade and salary. Second, he objects to the decision that his injury was not attributable to service. The Applicant's work consisted of checking registration documents and supervising the distribution of rations to refugees.

II. The Tribunal agrees with the finding of the Joint Appeals Board (JAB) relating to the decision to abolish and reclassify the Applicant's post. This decision was taken in the context of a structural reorganization by the Administration in the interest of the Agency. The Tribunal agrees with the JAB that there is no evidence of prejudice or bias against the Applicant, nor is there evidence of extraneous factors influencing the decision.

Indeed, the Applicant was subsequently appointed to the newly reclassified post of Registration Clerk, grade 7, and he received grade and salary protection.

III. On 8 November 1993, the Applicant wrote to the Director, UNRWA Affairs, Syrian Arab Republic, stating that he had undergone an emergency operation for an injury attributable to service. At this time also, he sought the appointment of assistants or, alternatively, transfer to an administrative post.

On 24 November 1993, the Applicant was examined by a panel of three physicians (the medical panel) on behalf of UNRWA. They reported that the Applicant had suffered from a left inguinal hernia since March 1993. On 3 October 1993, while performing the duties of his post, the Applicant felt severe pain in the left inguinal region and abdomen, with vomiting. He was taken to the hospital where a left strangulated inguinal hernia was diagnosed. An immediate operation was performed, since this condition was determined to be life-threatening.

The medical panel's report stated that the Applicant's "accident occurred during the work time. However, the possibilities of strangulation of the hernia [are] higher in performing physical hard work where the case is usually found among labourers rather than administration workers."

The Chief of Medical Care Services, on reading the medical panel's report, concurred with the finding that "strangulation of

hernias is higher in persons who perform hard physical work, which is not the case with [the Applicant]."

The medical report does not address the Applicant's work condition in relation to either the Applicant's strangulation of the hernia or to the performance of hard physical labour by the Applicant.

IV. Staff rule 106.4 provides, inter alia, that "compensation shall be awarded, in the event of death, injury or illness of a staff member, which the Agency determines to be attributable to the performance of official duties on behalf of the Agency."

The Respondent contends that the Applicant's claim should not be considered because the claim was not submitted within two months of the onset of the illness, which, according to the Respondent, occurred in March 1993.

V. The medical panel's conclusion on 24 November 1993, in this regard, is based on the medical history given by the Applicant. However, even though the Applicant had been experiencing symptoms from March 1993, the situation only became critical in October, when the Applicant had emergency surgery. It would be unfair, in the Tribunal's view, to penalize the Applicant for having endured whatever symptoms he had, and for having continued to work despite the symptoms, until the emergency arose. It is understandable that the Applicant did not realize that he might have been developing a serious condition. The existence of a serious condition only emerged in October. Therefore, the Applicant's notification of his illness was made within the required time period.

V. While there is no direct evidence of what precisely caused the strangulation, in the absence of a conclusive medical report, neither the Respondent nor the Tribunal can determine the cause of the strangulation. The Applicant states that he was performing the

functions of two staff members, as he was both foreman and distribution labourer, which require hard physical labour. Therefore, the Tribunal agrees with the JAB that a reasonable conclusion is that the illness or injury could be attributable to service.

VI. For the foregoing reasons, the Tribunal finds that the Commissioner-General erred in finding that the Applicant's illness was not attributable to service. The Tribunal therefore orders that the decision not to compensate the Applicant be re-considered under the provisions of area staff rule 106.4.

VII. Accordingly, the Tribunal orders the case to be remanded to the Agency to be dealt with in accordance with the provisions of the Staff Rules relating to injury or illness attributable to the performance of official duties on behalf of the Agency, and that the Applicant be awarded the appropriate compensation which may arise therefrom.

VIII. The Tribunal rejects all other claims made by the Applicant.

(Signatures)

Hubert THIERRY
President

Samar SEN
Vice-President

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 818

Case No. 906: PAUKERT

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mikuin Leliel Balanda, Vice-President, presiding; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, on 10 and 26 October 1995, Libuse Paukert, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 23 January 1996, the Applicant, after making the necessary corrections, again filed an application containing pleas requesting the Tribunal, inter alia:

> "(a) To hold that during her period of service with the United Nations the [A]pplicant was a victim of a series of decisions taken in violation of Article 100 of the United Nations Charter and of Article 1 of the Staff Regulations;
>
> (b) To award her compensation of an amount of two hundred and fifty thousand Swiss francs for the grave injury both to her career and to her pension entitlements caused by those decisions;
>
> (c) To award her the sum of four thousand Swiss francs in respect of legal costs and expenses."

Whereas the Respondent filed his answer on 5 July 1996;

Whereas, on 21 May 1997, the Applicant filed an additional document with the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office at Geneva (UNOG) in the Economic Commission for Europe (ECE), on an eleven week, special service agreement on 1 October 1962. From this date through 20 July 1984, she served on a total of 45 consultancy or temporary assistance contracts. On her 1963 personal history form, the Applicant was listed as a British citizen, with her nationality at birth as Czechoslovakian.

Although the Applicant had been given 45 contracts with the Organization, and despite two very positive appraisals of her performance, in 1963 and 1968, she had never been granted either a fixed-term or a permanent appointment. On 28 February 1979, the Chief, Secretariat Recruitment Section, wrote to the Executive Officer, ECE, setting out the Applicant's employment record. He noted that:

> "... the above table gives the impression that [the Applicant] is hired to do a job ... essential to the ECE on a regular basis and which I would have thought by now should have been included in the regular work programme rather than assigned to a consultant or temporary staff member.
>
> I would very much appreciate your clarification of the continued hiring of [the Applicant]."

There is no reply on record to the foregoing communication. One of her supervisors noted, "I wish we could find a place for her on our regular staff". Another gave her an overall rating of "outstanding" in her performance evaluation. The Applicant alleges that, at that time, she was told, inter alia, that she could not be given regular employment status as the British quota was full.

On 28 May 1984, the Applicant wrote to the Special Assistant to the Executive Secretary of the ECE that she had been "utterly

astonished ... when you told me that the sole obstacle to my being hired ... was my 'offensive behaviour towards the former Executive Secretary.' ... I had only very pleasant contacts with [him]." By a letter dated 4 June 1993, addressed to the Director, Division of Administration, UNOG, the Applicant requested that she be granted compensation for the material and moral prejudice she had suffered during her 22 years of employment in the United Nations. The Applicant stated that she had received a written declaration dated 20 April 1993, from the former Permanent Representative of the Czech and Slovak Federal Republic at the United Nations in Geneva, certifying that formal instructions had been given by the authorities in Prague to the Chief of Mission of the Czech and Slovak Federal Republic in 1963, during the 1970's and in 1984, to approach the Executive Secretary of the ECE and the UN Personnel Service to ensure that the Applicant would never be given regular employment in the United Nations. These instructions were apparently motivated by the Applicant's "class origin" and the fact that her family had taken her abroad when leaving the country in 1948.

Since the Applicant received no reply to her letter of 4 June 1993, she sent two reminders to the Director, Division of Administration, on 7 September and 1 October 1993. These also remained unanswered.

On 30 November 1993, the Applicant requested the Secretary-General to review the decision to deny the claim for compensation made in her letter of 4 June 1993, which the Applicant inferred from the absence of response to her request.

By a letter dated 5 January 1994, the Chief, Administrative Review Unit, acknowledged receipt of the Applicant's request and informed her that the two month time-limit provided for in staff rule 111.2 (a) (ii) had begun to run as of 17 December 1993.

Having received no reply within the specified time-limit, on 2 March 1994, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB).

The JAB adopted its report on 9 June 1995. Its considerations and conclusions read, inter alia, as follows:

> "23. The Panel first examined the receivability ratione materiae of the present appeal. The Panel noted that the Appellant had specified several times that her appeal was against the refusal of the Administration to entertain her claim for compensation, as clearly stated in her request for review dated 30 November 1994 addressed to the Secretary-General which reads, inter alia, 'Accordingly, I wrote on 4 June 1993 to [...], Head of Administration, United [Nations] Office at Geneva, to bring the matter to his attention and to request compensation for the serious moral and material injury that I have suffered in my career. (...) All these letters remained without an answer. The Organization's silence leads me to the conclusion that the UNOG is not prepared to consider and to respond favourably to my request. I wish to appeal against that refusal. In accordance with staff rule 111.2, I am therefore bringing the matter to your attention, for review of the UNOG's failure to accede to my claim ...' (emphasis added). Consequently, and pursuant to staff rule 111.2 and article 7 of the Rules of Procedure and Guidelines of the Geneva Joint Appeals Board, as well as to the Tribunal's jurisprudence (see, inter alia, UNAT Judgement No. 165, Kahale, paragraph I), the Panel considered that the scope of the present appeal was limited to the specific administrative decision of refusal to entertain the Appellant's claim for compensation.
>
> ...
>
> 25. ..., the Panel went on to consider its competence to examine the present appeal. The Panel first had to define whether the refusal of the Administration to entertain the claim of the Appellant for compensation constituted an administrative decision in the meaning of staff regulation 11.1. The Panel found that an administrative decision that adversely affects an Appellant can only exist where there is a legal relationship between the two parties. Indeed, an administrative decision is a decision taken by the Administration which unilaterally changes the terms and conditions of employment of the Appellant by affecting his/her rights under the relevant provisions or general

principles of the legal system of the Organization. Consequently, the appeal must indicate some genuine relationship between the complaint and the relevant provisions invoked.

26. The Panel found that in the present case there exists no such legal relationship between the two parties and that the refusal to entertain the Appellant's claim for compensation cannot be considered an administrative decision within the meaning of staff rule 111.2(a) and staff regulation 11.1. Had the Appellant not restricted her appeal to the specific decision of refusal to entertain her claim for compensation, but entered the issue of the alleged breach of Article 100 of the United Nations Charter and of Article 1 of Staff Regulations in the course of her employment within the United Nations, the course of this appeal may have been different.

27. In the light of the above, the Panel decided that the appeal was irreceivable ratione materiae, and that the Panel was not competent to examine it, in accordance with staff rule 111.2 (j). In view of the foregoing, the Panel did not enter the merits of the case, nor did it examine its receivability ratione temporis.

28. The Panel concludes that the Administration's refusal to entertain the Appellant's claim for compensation is not an administrative decision on which an appeal can be based."

On 6 October 1995, the Applicant was advised by the Under-Secretary-General for Administration and Management of the Secretary-General's decision as follows:

"The Secretary-General has conducted an extensive review of this case in the light of the Board's report and has noted that, from 1 October 1962 to 20 July 1984, you have been hired on 45 contracts of consultancy or temporary assistance by UNOG. He has also been apprised of the belated statements of 20 April 1993 by a former CSR [Czechoslovak Socialist Republic] Ambassador to the UN, of 18 March 1994 by a former ECE Executive Secretary and another of 27 March 1994 by a supervisor, asserting the existence of CSR interventions in the previous decades.

The JAB Panel has declined to enter into the merits of this evidence, finding that there was no 'legal relationship between the two parties', nor an 'administrative decision within the meaning of staff rule 111.2(a) and staff

regulation 11.1'. Consequently, the Panel concluded that your appeal was not receivable rationae materiae and it did not examine if it was receivable rationae temporis.

On this last aspect, the evidence tabled at the JAB does not provide any element excusing your delay in submitting, much earlier, an appeal in accordance with Staff Rules and Regulations. Each of the 45 contracts was accepted and signed by you. Any dispute as to the propriety of the offer of those contracts to you is long time-barred and that time bar cannot be eluded by simply, years later, submitting a challenge and then arguing that a failure to reply to that challenge is a fresh decision on the merits of the claim which may be appealed without reference to the time bar.

While it has been recognized that, under certain conditions, a long series of Special Service Agreements (SSAs) by a person performing regular functions of a staff member may create an expectancy of renewal, the Tribunal has held that failure to submit a claim in a timely manner precludes compensation or recalculation of contributory service to the Pension Plan (UNAT Judgement 281, H. de Vittorioso). In this case the time-limit to exercise your right of appeal must be computed from the dates you have voiced concerns on your contractual status which, according to your 'Supplementary Observations' of 30 May 1994, took place 'on a number of occasions' between 1963 and 1980.

The Secretary-General, therefore, considers that your appeal relates to actions taken during the period mentioned above and, being long time-barred, has consequently decided to reject your claim for compensation."

On 23 January 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision by the Organization to accede to political interventions by delegates of the former Czechoslovak Socialist Republic violated Article 100 of the Charter and Article 1 of the Staff Regulations.

2. The Applicant's claim for compensation for the foregoing violations is not time-barred because she never received

notification of the real reasons for the decisions taken by the Organization regarding her employment. For jurisdictional purposes, the time-limit begins to run from the date of such notification, which the Applicant received on 20 April 1993. The Applicant filed a claim for compensation on 4 June 1993; her appeal is therefore timely.

Whereas the Respondent's principal contention is:

Staff rule 111.2(a) specifies time-limits for lodging appeals against administrative decisions. The Applicant's request for a review of the contested decision did not respect the applicable time-limit and is therefore time-barred.

The Tribunal, having deliberated from 9 to 25 July 1997, now pronounces the following judgement:

I. This appeal is based on the Respondent's refusal to consider the Applicant's request for compensation for injurious decisions made with respect to her employment in violation of Article 100 of the Charter and Article 1 of the Staff Rules. After waiting almost six months for a response to her original request for compensation, the Applicant considered that the Respondent's failure to respond constituted an administrative decision and thus requested the Secretary-General to review that decision, in accordance with staff rule 111.2(a). The Respondent notified the Applicant that the two month time limit for review by the Respondent commenced to run on 17 December 1993, expiring on 17 February 1994. The Applicant subsequently filed her appeal to the Joint Appeals Board (JAB) on 2 March 1994, in accordance with staff rule 111.2(a)(ii).

II. The JAB adopted its report on 9 June 1995. It determined that the Applicant's appeal was not receivable ratione materiae

because the underlying refusal by the Respondent to consider the Applicant's request for compensation was not an administrative decision within the meaning of staff rule 111.2 and staff regulation 11.1. The JAB concluded that no legal relationship existed between the parties and, thus, the refusal to consider the Applicant's claim was not a decision that changed the terms and conditions of the Applicant's employment. Because the JAB determined that the Applicant's case was not receivable ratione materiae, the Board did not examine receivability ratione temporis or reach a decision on the merits.

III. The Tribunal finds the determination of the JAB to be in error with regard to receivability ratione materiae. First, the Tribunal rejects the JAB's conclusion that the underlying refusal to consider the claim is not an administrative decision within staff rule 111.2 and staff regulation 11.1 because there was no legal relationship between the parties. To begin with, Staff Rules determining the appropriate joint appeals body to which an appellant should appeal, refers to "former staff members." The implicit assumption is that former staff members may bring grievances arising from their previous employment with the UN to the appropriate reviewing bodies, including the JAB.

IV. Furthermore, article 2(2) of the Tribunal's Statute states that the Tribunal shall be open to any staff member "even after his employment has ceased, and to ... any other person who can show that he is entitled to rights under contract or terms of appointment." The language of the Statute clearly indicates that former staff members and others injured with respect to their UN employment have standing to raise their grievances through the appropriate administrative channels. As the Applicant has noted, the Tribunal has heard cases from former employees of the UN and has not dismissed such cases on grounds of the applicant's status as a

former employee. (Cf. Judgements No. 232, Dias (1978), and No. 320, Mills (1983)).

V. Second, the JAB notes in its report that "[h]ad the Appellant not restricted her appeal to the specific decision of refusal to entertain her claim for compensation, but entered the issue of the alleged breach of Article 100 of the Charter and of Article 1 of the Staff Regulations in the course of her employment within the United Nations, the course of this appeal may have been different." However, the Tribunal finds that the JAB erroneously determined that the Applicant had not placed the alleged breach of Article 100 of the Charter and Article 1 of the Staff Rules before the JAB.

VI. The Tribunal is of the view that the Applicant properly placed the merits of the case before the Respondent in her letter of 30 November 1993, as indicated by her statement "I take the liberty of submitting to you a case of discrimination in employment by the United Nations ..." and her subsequent articulation of her substantive claim. Based on the Applicant's letter and attached annexes, it should have been clear to the Respondent that the Applicant was requesting a review on the merits of her case. Moreover, the Tribunal finds that the Applicant properly placed the merits of the case before the JAB, in laying them out both in her original application and in her subsequent written comments to the JAB. Under these circumstances, the Tribunal is unconvinced by the JAB's observation that the "scope of the present appeal was limited to the specific administrative decision of refusal to entertain the Appellant's claim for compensation." The fact that the administrative decision was in the form of a failure to respond, rather than an explicit rejection of the Applicant's claim, does not change the underlying nature of the claim, i.e., injury due to decisions in violation of the UN Charter and Staff Rules with respect to the Applicant's employment.

VII. The Tribunal does not concur with the JAB's reasoning on receivability ratione materiae because of its erroneous outcome. The Tribunal therefore finds that the Applicant's claim is receivable ratione materiae.

VIII. As to receivability ratione temporis, the documentation demonstrates that the Applicant conformed to all specified time-limits in staff rule 111.2, from the time she initially wrote the Respondent on 30 November 1993, requesting review of UNOG's refusal to consider her claim. The Tribunal finds no fault in the Applicant's conformity to procedure from this date forward.

IX. The Respondent's main contention before the JAB and this Tribunal is that the application is time-barred because this appeal should have been filed within two months of the final date of the Applicant's UN employment on 20 July 1984. According to the Respondent's calculations, the Applicant did not initiate her claim until nine years later and thus her application is clearly time-barred under staff rule 111.2. The Tribunal rejects the Respondent's reasoning but agrees with the Respondent's conclusion.

X. The Tribunal notes that the Applicant presents no less than six sworn statements of persons familiar with her UN employment history who support the allegation that the Applicant was barred from permanent employment with the UN, as a result of political pressure from the authorities of the former Czechoslovak Socialist Republic. Moreover, the Applicant presents evidence of consistent high-quality work, as well as her supervisors' repeated recommendations that she should be hired for a permanent position. Despite a twenty-two year record of recommendations and quality work, the Applicant entered into forty-five short-term and special service agreements contracts without challenging the fact that she was not posted in a permanent position. The Tribunal agrees with

the Applicant that the responses she received to repeated inquiries about her career opportunities, including the British quota and alleged inappropriate conduct, were vague and unsubstantiated. In the face of the span of years and the number of contracts, the Tribunal cannot understand why the Applicant did not present claims during the twenty-two years or at the end of her service. The statements by six persons that violations of the Charter took place, suggest that if the Applicant had questioned the Respondent during or immediately after her service, these responses would have been forthcoming. The Applicant simply continued to accept short-term appointments and special service agreements without challenging the reasons given. Although it is a harsh result, the Tribunal concludes that the Applicant bears responsibility for not raising issues at the time they are relevant. The Tribunal recalls its judgement in Renninger (No. 549 (1994)), that:

> "... delay was plainly detrimental to the Respondent since his financial obligation for the actuarial expense of recognizing past service [for pension purposes] would increase with the passage of time. Under such circumstances, it would be unjust in the extreme to ignore the conduct of the Applicant in delaying for so long the assertion of his claim. ...
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> ... ordinarily, when timely efforts to vindicate a claim are of importance because of potential prejudice resulting from delay, logic suggests that the starting point for measurement of the delay is the point at which one knows, or should have known, of the existence of the claim ... One acts at one's own peril after a claim arises by unreasonably delaying appropriate steps for vindication of the alleged right." (Emphasis added)

Here, the Applicant should have questioned the reasons for her not being placed in a permanent position. Had she done so, she would have discovered, what, apparently, a number of staff members believed to be the reasons for her not being placed in a permanent

position. To raise these issues nine years after separation and thirty-one years after the alleged abuse began is unacceptable.

XII. For all the reasons stated above, the Tribunal finds that the Applicant's appeal is time-barred.

(Signatures)

Mikuin Leliel BALANDA
Vice-President, presiding

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

Geneva, 25 July 1997

R. Maria VICIEN-MILBURN
Executive Secretary